

STATE OF MICHIGAN  
COURT OF APPEALS

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REGINA VAN BUREN,

Plaintiff-Appellant,

v

WOODSTOCK APARTMENTS,

Defendant-Appellee.

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UNPUBLISHED

January 29, 2009

No. 282642

Wayne Circuit Court

LC No. 07-703409-NO

Before: Hoekstra, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

In this premises liability action, plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We reverse and remand for further proceedings.

Plaintiff filed this action to recover damages for injuries sustained when she fell while visiting the apartment of her sister, a tenant in defendant's apartment building. Plaintiff alleged that she lost her balance while walking in a hallway inside the apartment because the floor under the carpet was uneven and in disrepair. In her deposition, plaintiff admitted that she was aware of the uneven condition of the floor before she fell. The trial court concluded that plaintiff was only a licensee and, as such, her knowledge of the uneven condition of the floor precluded a claim for premises liability. Accordingly, it granted defendant's motion for summary disposition.<sup>1</sup>

We review a trial court's summary disposition ruling de novo. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Defendant moved for summary disposition under MCR 2.116(C)(8) and (10). Although the trial court did not state the subrule under which it granted defendant's motion, it is apparent that the court granted the motion under MCR 2.116(C)(10) because it relied on evidence outside the pleadings when granting the motion. *Elezovic v Ford Motor Co*, 274 Mich App 1, 5; 731 NW2d 452 (2007). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Campbell v Kovich*, 273 Mich App 227, 229; 731 NW2d 112 (2006). "[A] court must consider in the light most favorable to the nonmoving

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<sup>1</sup> The trial court dismissed additional claims for breach of contract and liability pursuant to MCL 554.139(1), but plaintiff has not challenged the dismissal of those claims on appeal.

party the pleadings, affidavits, depositions, admissions, and other documentary evidence then filed in the action or submitted by the parties.” *Id.* The motion should be granted only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *West, supra* at 183.

In this case, the trial court determined that plaintiff was a licensee, not an invitee. A “licensee” and an “invitee” are two of the historical common-law classifications for persons who enter upon the premises of another. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). The individual’s status generally determines the duty imposed upon a premises owner or possessor for dangerous conditions on the land. *Id.* at 596. “A ‘licensee’ is a person who is privileged to enter the land of another by virtue of the possessor’s consent.” *Id.* at 596. Conversely, an “invitee” is a person who enters the land by invitation and with an implied representation, assurance, or understanding that reasonable care was used to make the premises safe. *Id.* at 596-597. “In order to establish invitee status, a plaintiff must show that the premises were held open for a *commercial* purpose.” *Id.* at 604 (emphasis in original); see also *Campbell, supra* at 236.

The evidence clearly showed that plaintiff was a social guest of her sister at the time of her alleged injury. However, the trial court erred in concluding that plaintiff’s status as a social guest required that she be treated as a licensee. Although social guests of landowners are typically licensees, *Stitt, supra* at 596, “the duties owed by a landlord to the social guests of a tenant are duties owed to invitees, not licensees.” *Petraszewsky v Keeth (On Remand)*, 201 Mich App 535, 540-541; 506 NW2d 890 (1993), citing *Quinlivan v Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244, 257 n 10; 235 NW2d 732 (1975). The trial court’s decision was based solely on its erroneous determination that defendant’s duties were limited to those owed to a licensee.<sup>2</sup> Accordingly, we reverse the trial court’s decision and remand for further proceedings.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Joel P. Hoekstra  
/s/ E. Thomas Fitzgerald  
/s/ Brian K. Zahra

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<sup>2</sup> The trial court correctly concluded that if defendant’s duties were limited to those owed to a licensee, plaintiff’s awareness of the uneven condition of the floor would preclude a claim for premises liability. *Stitt, supra* at 596 (a landowner’s duty to a licensee extends only to “hidden dangers the owner knows or has reason to know of, *if the licensee does not know or have reason to know of the dangers involved*”).